

MAINE STATE LEGISLATURE

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STATE OF MAINE

R E P O R T

OF THE

ATTORNEY GENERAL

for the calendar years

1949 - 1950

January 31, 1950

To Frank S. Carpenter, Treasurer of State
Re: Disposition of Income from Reserve in Permanent Trust Funds
Chapter 31, P. L. 1949

I have your memo of December 15, 1949, relating to the restoration to the Permanent Trust Funds of the amounts of losses in savings account balances impounded in closed banks.

The statute above cited provides: "The treasurer of state and the state controller are hereby authorized to apply in partial or full restoration of losses sustained on impounded bank accounts of the 'Permanent Trust Funds,' from profits available from sale of capital assets of said trust funds in such amount and to each specific trust only in an amount equal to the capital gains of each specific trust, and that no capital gains or securities held in any trust fund shall be applied on losses of any other trust fund excepting only when, as and if, a common fund is created."

By Section 2 of said Chapter 31, the legislature appropriated \$42,681.04 to restore the original principal of trust funds to each specific trust where present capital gains are insufficient to offset losses on impounded bank balances, and in such trust funds as had no capital gains.

You state in your memo of December 15th that there is nothing in Chapter 31, P. L. 1949, which instructs you as to the distribution of income earned by the securities in which the reserve funds are invested, and that there is some question in your mind as to whether such income belongs to the reserve funds and should be added to them and become a part of them or whether the income should be distributed as active income to the beneficiaries of the various trust funds involved. You request my opinion as to the proper distribution of such income. You attach a statement of facts concerning the reserve funds.

I have talked this over with the Finance Commissioner and the State Controller, and they agree that income from the reserve funds should be distributed to the beneficiaries of the various trust funds involved. They say that in the absence of any specific instructions in Chapter 31, P. L. 1949, as to the distribution, it would seem that such distribution should be made in the same manner as that provided for the earnings of the trust fund itself.

RALPH W. FARRIS
Attorney General

February 1, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Guardianship—Inmates of Institutions

I have your memo of January 30th in which you state that the Augusta office of the Federal Security Agency, Social Security Board, has raised the question of your department's status as guardian over inmates of the various institutions under your supervision as it might relate to beneficiaries under the various phases of Social Security benefits.

You give as an instance that a boy committed to the Pownal State School is a beneficiary under certain conditions of the Social Security Act and the question has been raised as to guardianship in his case by the Department of Institutional Service, through the Commissioner and the Superintendent over his estate or person.

You state that you also have inmates at the Military and Naval Children's Home who participate in benefits under the provisions of Old Age and Survivors Insurance, and the Commissioner and Superintendent are named as co-guardians.

Upon this basis you ask for a ruling as to the status of your department, the Commissioner, and the Superintendent of the institution in question in regard to guardianship of inmates.

I wish to advise that under Section 175 of Chapter 23, the Commissioner and the Superintendent shall act as a board of guardians of all the children who are members of the State Military and Naval Children's Home and shall have all the powers and authority granted by law to guardians, which statute would be sufficient to satisfy the Federal Security Agency. Section 86 contains a guardianship clause in regard to inmates of the State School for Girls.

There is a general statute that provides that all inmates of the institutions shall be wards of the State; but that does not in my opinion give the Commissioner or the Superintendent of the institution the powers granted by law to guardians in the handling of their personal estates. Therefore when a question comes up relating to an inmate of the Pownal State School or one of the State Hospitals, it has always been the policy of this office to advise the Superintendent or the Commissioner to have a guardian appointed in the Probate Court for the purpose of handling any property which may belong to an inmate of an institution. Of course the appointment of a guardian, even if he is the Superintendent or the Commissioner, would in my opinion satisfy the Federal Security Agency relative to the various phases of Social Security benefits. . . .

RALPH W. FARRIS
Attorney General

February 1, 1950

To Norman U. Greenlaw, Commissioner of Institutional Service
Re: Transfer of Mental Patients from Another State

I received your memo of January 30th relating to the provisions of Section 117, Chapter 23, R. S., which provides for the transfer of mental patients "currently confined" in a recognized state mental hospital as a result of proceedings considered legal by that state. You say that of late you have been receiving numerous requests for authority to transfer to Maine persons who have been committed to out-of-state hospitals on an emergency basis, namely, 30-day observation; and that your department does not believe it was the intent of the legislature to authorize the transfer of such persons committed on an observation basis. You would therefore like to have my opinion on this matter.